

IN THE SUPREME COURT OF FLORIDA

INQUIRY CONCERNING A

JUDGE, No. 04-239,

JUDGE RICHARD H. ALBRITTON, JR.

Florida Supreme Court

Case No. SC05-851

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**MEMORANDUM IN OPPOSITION**  
**TO RESPONDENT'S MOTION TO STAY**

**COMES NOW** the undersigned, as Special Counsel to the Judicial Qualifications Commission ("JQC"), and responds to Honorable Richard H. Albritton, Jr.'s Motion To Stay as follows:

1. For all the reasons stated in the JQC's previously filed Motion to Compel Deposition, it once again opposes Judge Albritton's most recent Motion to Stay. For Judge Albritton to suggest that he has been denied the ability to learn the facts behind the allegations against him is disingenuous. To obtain this information, all he must do is utilize the discovery procedures sanctioned by the Florida Rules of Civil Procedure. After resisting Special Counsel's repeated invitations, Judge Albritton has finally done what he should have done almost a year ago, sent out comprehensive interrogatories, attached hereto as **Exhibit "A,"** which will provide him with all the information he needs. Apparently, Judge Albritton will not be content until he is permitted to invade the work product of the JQC. For reasons of principle, the JQC must oppose this.

2. The JQC filed its Notice of Formal Charges on May 19, 2005.

3. After numerous requests from the undersigned to set Judge Albritton's deposition, on November 30, 2005, the JQC filed a Motion to Compel Judge Albritton's deposition.

4. In an Order dated January 26, 2006, Judge Wolf granted the JQC's Motion to Compel and ordered Judge Albritton to sit for deposition.

5. Shortly thereafter, Judge Albritton filed a petition for review before the entire hearing panel and a motion to stay Judge Wolf's Order compelling his deposition until after the hearing panel had considered his petition for review. Judge Albritton's petition for review was entitled "Petition for Review of Order on **Motions** to Compel" and sought to reverse both Judge Wolf's findings with respect to Judge Albritton's motion to compel production of certain privileged material and the JQC's motion to compel Judge Albritton's deposition.

6. On February 9, 2006, Judge Wolf entered an Order granting Judge Albritton's Motion to Stay "until such time as a full hearing panel rules on the petition for review."

7. On March 14, 2006, the full hearing panel denied Judge Albritton's petition for review.

8. On March 16, 2006, the undersigned sent the JQC's eighth written request to Judge Albritton's counsel to set Judge Albritton's deposition. That same day Judge Albritton's counsel responded to the undersigned's eighth request and stated that he believed that the stay of Judge Wolf's Motion to Compel remained in effect and that Judge Albritton would not appear for a deposition.

9. The hearing panel ruled on Judge Albritton's petition for review and denied it, affirming both of Judge Wolf's prior Orders. By its own terms, the stay of Judge Wolf's Order compelling Judge Albritton's deposition has now been dissolved. There can be no grounds upon which Judge Albritton can continue to refuse to sit for his deposition in this matter.

10. On March 23, 2006, Special Counsel filed a Motion to Compel Deposition of Judge Albritton before the JQC.

11. At a preliminary hearing conference conducted on April 4, 2006, Judge Wolf ordered Judge Albritton to sit for deposition at his earliest possible convenience. However, Judge Wolf also held that Judge Albritton had not exhausted his administrative remedies and that Judge Albritton's motion to compel production was still "pending in front of this panel." A transcript of the hearing conference was previously filed with this Court by John Beranek, General Counsel to the Hearing Panel.

12. Judge Albritton's counsel, when asked by Judge Wolf at the preliminary hearing conference to identify the information Judge Albritton needed access to in order to prepare for his deposition, was unable to identify any particular information contained in the Confidential Witness Interview Summaries that was necessary to help Judge Albritton prepare.

13. At the April 4 hearing, Judge Albritton's counsel stated that there were several individuals whom the JQC's investigator interviewed, but who were not listed as potential witnesses by the JQC. He requested that Judge Wolf review the interview summaries of those witnesses to determine if they contained potentially exculpatory evidence.

14. Pursuant to Judge Albritton's request, Judge Wolf performed an *in camera* review of the witness interview summaries of Frank A. Baker, June M. Lashbrook, Alton O. Paulk, and Mark Sims. By letter, dated April 10, 2006, attached hereto as **Exhibit "B,"** Judge Wolf determined that the summary of Frank Baker's interview was the only summary which contained "anything even remotely exculpatory." Accordingly, Judge Wolf provided a copy of that summary to Judge Albritton's counsel.

15. At the April 4 hearing, Judge Wolf did order Judge Albritton to sit for deposition. However, not only has Judge Wolf now conducted *in camera* review of the witness summaries identified by Judge Albritton as being potentially exculpatory, but Judge Wolf also ordered that Judge Albritton's deposition take place after he has a the opportunity to conduct depositions of the JQC's witnesses. Toward that end, Judge Albritton has already taken three depositions of potential witnesses and has many more set for the week of May 9th, prior to his own deposition.

16. Judge Albritton's claim that he must review the confidential witness interview summaries in order to prepare for his deposition is without merit. The confidential witness interview summaries identified by Judge Albritton's counsel as being potentially exculpatory have already been reviewed by Judge Wolf, and the one potentially exculpatory summary was provided to Judge Albritton. Judge Wolf's *in camera* review of the confidential witness summaries, combined with the depositions Judge Albritton has scheduled prior to his own deposition, and his interrogatories to Special Counsel provide Judge Albritton with access to the summaries and more than enough information to prepare for his deposition. A stay clearly is not necessary.

17. Additionally, Judge Albritton's Motion to Stay is premature and not ripe for action by this court.

18. Rule 9.310(a), Florida Rules of Appellate Procedure, provides that "a party seeking to stay a final or non-final order pending review **shall file a motion in the lower tribunal**, which shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief."

19. Judge Albritton has not requested a Stay of the Hearing Panel's order from the Hearing Panel itself, as required by Rule 9.310(a). Therefore, his motion is not properly before this Court and the Hearing Panel retains jurisdiction over this matter.

20. Finally, this Court has held that decisions of a lower tribunal are "presumptively final ... subject to an applicant's showing that there is both a likelihood of success in the Supreme Court and irreparable harm by the denial of a stay pending review." *State v. McCord*, 380 So.2d 1037, 1039 (Fla. 1980).

21. Judge Albritton has not attempted to make the necessary showing that he has a likelihood of success in this Court and that he will suffer irreparable harm if his Motion to Stay is denied, and he is incapable of satisfying this standard.

For the foregoing reasons, the JQC respectfully requests this Court deny Judge Albritton's Motion to Stay and order him to comply with the JQC's Order that he submit to a deposition.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail this 17<sup>th</sup> day of April, 2006 to:

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